

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**  
**IN AND FOR SUSSEX COUNTY**

STATE OF DELAWARE	)
	)
v.	) ID 1008005495
	)
LEPRE M. DOUGHTY	)
	)
Defendant,	)

**MEMORANDUM OPINION**

*Upon Defendant's Application for Transfer  
to Family Court. Denied.*

**Submitted: February 1, 2011**  
**Decided: February 10, 2011**

Melanie C. Withers, Esquire, Deputy Attorney General, Department of Justice,  
Georgetown, Delaware, Attorney for the State of Delaware.

William B. Wilgus, Esquire, Millsboro, Delaware, Attorney for Defendant.

STOKES, J.

Upon consideration of Defendant Lepre M. Doughty's application to transfer his case to Family Court, the evidence presented at the reverse amenability hearing and the arguments of counsel, it appears that:

1. Defendant is charged with numerous offenses stemming from a series of crimes committed July 16–25, 2010 in Rehoboth Beach, Delaware and another series of crimes committed July 28–August 1, 2010 in Milton, Delaware.

2. The charges include: two counts of Robbery First Degree, three counts of Attempted Robbery First Degree, one count of Assault Second Degree, thirteen counts of Burglary Third Degree, seven counts of Conspiracy Second Degree, one count of Conspiracy Third Degree, six counts of Theft, five counts of Attempted Theft, one count of Theft–Senior, and eight counts of Criminal Trespassing Third Degree.

3. Defendant was 17 years old at the time of the crimes. If the application to transfer is granted, Family Court will retain jurisdiction over Defendant until October 4, 2011, when he will be nineteen years old.

4. A reverse amenability hearing was conducted February 1 and 2, 2011.

5. Pursuant to 10 *Del. C.* § 1011(b), the following factors, as well as any other relevant factors, must be considered in making a reverse amenability determination: (1) the nature of the present offenses; (2) the extent and nature of Defendant's prior record; (3) the nature of past treatments and rehabilitative efforts; (4) the nature of Defendant's response thereto; (5) whether the interests of society would best be served by trial in Family Court or

in Superior Court; and (6) whether the interests of Defendant would best be served in Family Court or in Superior Court.

6. As to the nature of the offenses, it must be determined whether the State has made a *prima facie* showing of Robbery First Degree,<sup>1</sup> which is established if there is a fair likelihood that Defendant will be convicted.<sup>2</sup> A fair likelihood is shown where, considering the totality of the evidence, and bearing in mind that the defense has yet to be presented, the likelihood of conviction is real if the defense does not sufficiently rebut the State's evidence.<sup>3</sup> A real probability must exist that a reasonable jury could convict on the totality of the evidence, assuming that the evidence introduced at the hearing is unrebutted by Defendant at trial.<sup>4</sup>

7. The record shows that the State has made a *prima facie* case of the Robbery First Degree of John Graves. The State's proffer includes Defendant's statement, as provided to Sergeant Jaime Riddle, the Chief Investigating Officer of the robberies in Rehoboth. Defendant placed himself at the scene of the robbery. Defendant said that he and Diandre C. Mapp were driven to Rehoboth Beach by Dale L. Reed. Upon arrival, Mapp got out of the vehicle and Defendant followed. Defendant stated that Mapp saw Mr. Graves and asked

---

<sup>1</sup>Title 10 *Del. C.* § 1010(a)(3).

<sup>2</sup>*Marine v. State*, 607 A.2d 1185, 1211 (Del. 1992).

<sup>3</sup>*State v. Mayhall*, 659 A.2d 790 (Del. Super. 1995), *aff'd sub nom Holder v. State*, 692 A.2d 1181 (Del. 1997).

<sup>4</sup>*Id.*

him, "How do you get back to the boardwalk from here?" As Graves pointed toward the beach, Mapp "dropped him." Defendant stated that he then ran and got into the car. Defendant showed Sgt. Riddle on a map the approximate location of the robbery of Mr. Graves.

8. The State presented the victim's statement from the initial incident report. Mr. Graves said that two black males stood a few feet apart from each other on the sidewalk in front of his house. One male standing to his left asked him a question. When Graves turned to him, the man standing to his right punched him on the right side of his face near his eye. Both suspects then grabbed into his pockets, causing him to fall to the ground. The record includes photographs of Mr. Graves' injuries and torn pocket.

9. The State also offered Mr. Graves' subsequent statements given to Sgt. Riddle, the chief investigating officer. Graves stated that as he was sitting on his porch in the early morning of Sunday, July 25, 2010, he saw two black males walking on Columbia Street in front of his house. The men stopped and asked him for directions. Because the voice or voices were soft, Mr. Graves came down from his porch to hear them better. As soon as one man asked Graves how to get to the boardwalk, the other man punched him in the right side of his face. He fell to the ground and both men went through his pockets, tearing the left pocket of his shorts. Mr. Graves was robbed of \$300 in cash, credit cards and a driver's license. His injuries included a swollen right upper cheek near his eye and a scrape to his left elbow.

10. Finally, the State's proffer included the statement of Dale (D.J.) Reed given to Sgt. Riddle. Reed said he picked up Mapp and Doughty near his house in Milton. Reed drove them first to Dewey Beach, then to Rehoboth Beach, parking on Rehoboth Avenue. Mapp and Defendant got out of the car, but Reed remained in the vehicle. As he was turning the car around in preparation to depart, Mapp and Doughty ran back and got in the car. Mapp said to Reed that "We peter-rolled him," in street language meaning they assaulted him, thus implicating Defendant in Graves' robbery.<sup>5</sup> Defendant's silence in the face of this statement constitutes an adoptive admission.<sup>6</sup>

11. Based on the State's proffer, a *prima facie* showing has been made on the First Degree Robbery of Mr. Graves. There is a real probability that a reasonable jury could

---

<sup>5</sup>There are several bases for admission at trial of Mapp's hearsay statement to Reed. First, the statement was an excited utterance made while Mapp was under the stress caused by the robbery of Mr. Graves. D.R.E. 803(2). Second, based on the evidence offered at the hearing, the State will be able to prove that a conspiracy existed; that Mapp, Doughty and Reed were members of the conspiracy; and that Mapp's statement was made during and in furtherance of the conspiracy. D.R.E. 801(d)(2)(E). Mapp's statement indicates that Reed knew someone was "peter-rolled" and that it was therefore time for the three men to flee. The conspiracy was not complete until the men fled the scene, as evidenced by the fact that, according to Reed, he was turning the car around for departure and that the three men immediately drove back to Milton. In *Harris v. State*, our Supreme Court affirmed the trial court's admission of a co-conspirator's statement that "we got that boy," because the statement was made by a co-conspirator in furtherance of the conspiracy. 695 A.2d 34, 42 (1997). Third, the Confrontation Clause is not implicated because Mapp's statement to Reed was not testimonial under *Crawford v. Washington*, 541 U.S. 36 (2004), *Davis v. Washington*, 547 U.S. 813 (2006) or *Jones v. State*, 940 A.2d 1 (Del. 2007).

<sup>6</sup>*Nasir v. State*, 1986 WL 17829 (Del.); *Brittingham v. Bd. of Adjustment of the City of Rehoboth Beach*, 2005 WL 170690 (Del. Super.); *Mezzatesta v. State*, 166 A.2d 433 (Del. 1960)(affirming trial court's admission of co-conspirator's statement "It is our business" because it was direct confession by speaker and implied confession by silent co-conspirator); 115 ALR 1510, II, e (Supp. 2011).

convict Defendant of this charge based on the totality of the evidence, assuming that the evidence from the hearing is not sufficiently rebutted by Defendant at trial.<sup>7</sup>

12. The nature of the charges against Defendant is serious. The State's case shows that the crimes in Rehoboth constitute a series of robberies and attempted robberies carried out in a similar manner against unsuspecting and vulnerable victims, including a 72-year-old man. These crimes demonstrate Defendant's willingness to inflict physical and emotional harm on other people in order to rob them. The crimes in Milton show a intentional effort to break into cars and steal whatever may be found, without regard for the property of others.

13. The facts also show Defendant's intent and ability to violate Court orders. He placed his required daily 7 p.m. curfew calls from home to his probation officer, deceiving her into believing that he was complying with conditions. He then traveled freely throughout the night, not only in violation of his probation but apparently committing serious felonies.

14. Defendant's juvenile adjudications include: (1) Disorderly Conduct in 2007; (2) Assault 3<sup>rd</sup> in 2008; (3) two counts of Unlawful Sexual Contact 3<sup>rd</sup> in 2009, resulting in registration as a Tier 1 sex offender; and Robbery 2<sup>nd</sup> in 2009. While not extensive, Defendant's juvenile record shows an increasingly menacing involvement in crime.

15. On the Robbery Second adjudication in Family Court, Defendant was sentenced to an indefinite commitment at Ferris School. While there, he completed all the basic requirements, including Substance Abuse Residential Treatment, anger management

---

<sup>7</sup>*State v. Mitchell*, 2005 WL 3194471 (Del. Super.).

program, Guided Group Interaction, and the Victim Empathy Group. He obtained his GED.

16. After six months at Ferris, Defendant was transferred to Mowlds Cottage, a six-week transitional program that all juveniles who attend Ferris must complete. He was released to after care on June 17, 2010 and went home to live with his mother in Milton.

17. During after care, he met with his juvenile probation officer, Elizabeth Robitaille-Nkurlu on a weekly basis. The average meeting lasted between 15 minutes to ½ hour. He had clean urine screens. He did not find a job, but did perform occasional landscaping and roofing with a friend.

18. Thirty-seven days after his release, Defendant was arrested on the current charges on August 7, 2010. He has done well in the structured environment at the New Castle County Detention Center (NCCDC). Ms. Robitaille testified that Defendant would receive little benefit from going back to Ferris, even though cognitive-behavioral therapy (CBT) has recently been implemented there. CBT replaced the previous therapeutic model based on a point system for different types of conduct. Ms. Robitaille, who is a probation officer, not a therapist, could not explain CBT. Defendant expressed to her an interest in attending Delaware Technical and Community College, but never filed an application or attended any meetings held there for prospective students.

19. This record speaks for itself. Defendant completed the required programs in order to obtain his release, only to re-offend in short order. During his incarceration in NCCDC, he has had no incident reports. Thus, Defendant functions well in a structured environment,

which cannot be offered by the Family Court beyond October 4, 2011.

20. A report prepared by a Master Family Service Specialist finds Defendant non-amenable to the Family Court and recommends that Superior Court retain its jurisdiction over him.<sup>8</sup> The report presents Defendant's criminal history, his conduct during both probation and incarceration and the rehabilitative programs he has completed.

21. The record demonstrates that society's interests are best served by treating Defendant as an adult and trying his case in Superior Court. Despite all the programs and rehabilitative efforts of the Family Court, Defendant returns to crime when he has the opportunity. If transferred back to Family Court, Defendant will be released on October 4, 2011. Seven months are insufficient to rehabilitate Defendant under Family Court programs, which Defendant has already completed.

22. Defense counsel argues strongly that Defendant is now benefitting from CBT, which has only recently been implemented by Family Court. Counsel believes that seven months of continued CBT would rehabilitate Defendant sufficiently that he would no longer pose a threat to society. However, the record does not include an explanation of CBT or the previous therapeutic model, or provide a reason that CBT would rehabilitate Defendant while other treatments in Family Court have not.

23. Regardless of the merits of CBT, seven months in Ferris School is insufficient time to prepare Defendant for reentry into society.

---

<sup>8</sup>State's Ex. 2.

24. Defendant's own interests have not been served by the resources and efforts of the Family Court. This is shown most clearly by the 37 days of freedom Defendant experienced prior to his arrest on the pending charges, which are the most serious he has yet faced. A release from Family Court in October 2011 would leave Defendant vulnerable to committing even more serious crimes, accompanied by the possibility of longer periods of incarceration. His own conduct shows that he is not amenable to Family Court. It also shows that he does not function well outside of a structured environment. The possibility of rehabilitation can be afforded to him only if his case remains in Superior Court.

Therefore, Defendant's application to have his case transferred to Family Court is **DENIED.**

**IT IS SO ORDERED.**

---

Richard F. Stokes

Original to Prothonotary